

### REMARKS

The Office action dated July 15, 2005, and the references cited therein have been received and carefully reviewed.

The Office action and the cited references were discussed during a personal interview between the undersigned and the examiner on October 5, 2005, for which, as a preliminary matter, the undersigned would like to thank the examiner for taking the time to discuss this case.

As a result of the Office action, claims 48 and 56 are rejected under formal grounds. Claims 23-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. As to claim 48, Applicant respectfully submits that no recitation of "notches or recesses" is found in that claim. Claim 56 has been amended to change "said reinforcement means" to "said upper reinforcement means". Moreover, as to claims 23 and 43, no recitation of "additional means" is believed to have been found in those claims, and Applicant respectfully requests further clarification with respect to that rejection.

Moreover, claims 43-55 and 58-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR2617801 in of DE2234223 and Druesne and further in view of the newly cited reference U.S. 4,391,383 to Babiol. Claims 20-22 remain allowable. These references have been considered but are not believed to show or suggest the claimed invention.

Reconsideration and allowance of the pending claims is respectfully requested in view of the following remarks.

By the above amendment, the limitations "providing an

additional means being selected from an upper line of weakness (43), an upper reinforcement means (47, 48), a lower reinforcement means (67), a means (66) for fastening all or part of lower part (11) to the neck" has been deleted from claim 20 and added to claim 21. Claim 23 has been amended to recite "wherein said upper line of weakness and said lower line of weakness are typically parallel, at least said lower line of weakness extending around the whole circumference of the cover," and "providing said upper and lower lines of weakness (43, 44) and said notches (460, 461) on an axial edge (60)." Claim 43 has been amended to delete the limitations "said cover comprising a lower reinforcement means (67) or an upper reinforcement means (47)." No new matter has been added.

In addition, the facts attested to by Mr. Jacques Granger in the attached executed Rule 1.132 Declaration explicitly demonstrate the commercial success of Applicant's East-to-Open cover (hereafter "EOC").

As set forth on page 3, lines 6-12, of the Declaration, Applicant's EOC was introduced into the market in 1999 and has since met with great commercial success, with sales in excess of 5 million units during the first year of production. Since the introduction of the EOC into the market, sales have continued to grow.

It is submitted that such commercial success can be attributed to the novel and non-obvious characteristics of the invention over the prior art. As set forth on pages 3, line

32 to page 4, line 11, of the Declaration, the success of the invention in the marketplace can be attributed to the following characteristics of Applicant's EOC:

- the top of the cover is easy to remove by a user using a single action and one hand;

- the top of the cover remains intact after removal from the body of the cover;  
the body of the cover remaining on the bottle after the top is removed remains intact, resulting in an excellent presentation of the bottle once opened.

Furthermore, the commercial success of Applicant's invention is also shown by the response of Applicant's competitors thereto in the marketplace. As set forth on page 4, lines 17-33, of the Declaration, the owner of the invention has initiated a number of infringement proceedings against its competitors in the French court system, based on at least one patent covering the invention. Secondly, several competitors have filed at least two patent applications for covers having similar characteristics to Applicant's EOC.

Applicant respectfully submits, therefore, that the commercial success of Applicant's product, which is directly attributable to the invention, is further evidence of the non-obviousness of the invention over the prior art. *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 656 F.Supp., 1343 2 USPQ 1545 (Del. 1987).

Moreover, as previously argued, the Applicant reiterates his position as to the non-analogous nature of DE2234223

reference. Under MPEP 2141.01, a reference must be analogous in order to be relied on as a Section 103 obviousness rejection. Clearly, the cover of DE2234223, within the bottle cap industry, is clearly used for Cognac or wine, and not for Champagnes, which requires a radically different structure, method of manufacturing, and the manner in which it is used and opened.

Furthermore, according to MPEP 2142, the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why an artisan would have found the claimed invention to have been obvious in light of the teachings of the references. In the present case, the only legally tenable suggestion or motivation that the examiner has provided to combine the teachings of the Babiol reference with the teachings of the combination of the French reference, the German reference, and Druesne is "in order to increase the moment of inertia of the trip." *Office action*, page 5.

However, Applicant respectfully submits that such suggestion is not relevant to the claimed invention and the reason for having the upper reinforcement. Babiol teaches a plurality of vertical ribs 9 on the innerside of the tearable strip and whose thickness aims at increasing the moment of

inertia of the cross-section of the strip in order to avoid the distortion of the strip by positioning of the capsule when an axial strain is applied on the bottom part 3. Therefore, in view of foregoing, it is respectfully submitted that the claimed invention is patentable over the prior art combination.

Each issue raised in the Office action dated July 15, 2006, has been addressed and it is believed that claims 20-61 are in condition for allowance. Wherefore, Applicant respectfully requests a notice of allowance be issued in this case.

Respectfully submitted,  
DENNISON, SCHULTZ,  
DOUGHERTY & MACDONALD

By: 

Amir H. Behnia  
Reg. No. 50,215  
(703) 837-9600 Ext. 16

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